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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,395	02/12/2002	James W. McMichael	44598A	3836
22515	7590	04/15/2004	EXAMINER	
THE DOW CHEMICAL COMPANY INTELLECTUAL PROPERTY SECTION 2301 N BRAZOSPORT BLVD FREEPORT, TX 77541-3257			LEE, RIP A	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Advisory Action

Application No.

10/049,395

Applicant(s)

MCMICHAEL ET AL.

Examiner

Rip A. Lee

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPÉP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☒ The proposed amendment(s) will not be entered because:
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 63.Claim(s) rejected: 41-51, 57-69 and 72.Claim(s) withdrawn from consideration: 52-56, 70 and 71.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 30082004.
 10. ☒ Other: attachment to advisory action



DAVID W. WU
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 1700

Attachment to Advisory Action

This office action follows a response filed on March 8, 2004. Claims 41-51, 57-69 and 72 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 41, 57-62, 64-69, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,060,510 to Himes *et al.* as explained previously.

4. Claims 41-51, 57-62, 64-69, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/10015 to Park *et al.* for the same reasons set forth previously.

Response to Arguments

5. Applicant's arguments have been fully considered, but they are not persuasive. The present claims are drawn to a polymer particle having an effective amount of anti-blocking agent mechanically adhered thereto. According to the present inventors, anti-blocking agent may be adhered to the polymer particles in any fashion. One method is to soften the polymer particles either before, simultaneously with, or after contacting the particles with the anti-blocking agent (page 20, line 12-14).

Himes *et al.* teaches dry blending of talc with thermoplastic component at a temperature range of about 170-250 °F. At temperatures below the lower limit, the resulting mass does not flow easily, and at temperatures above the upper limit, the particles begin to coalesce, resulting in a sticky mass that does not flow easily (col. 2, lines 42-49). This teaching is entirely consistent with the purpose of using anti-blocking agent in the present invention. As stated by Applicants, the anti-blocking agent inhibits polymer particle caking, agglomerating, aggregating and/or sticking (response, page 7, section C1). Park *et al.* teaches a related process in which the talc and polymer are preblended and fed into an extruder where it passes through an initial feeding zone at 160 °C and a transition zone at 177 °C prior to the actual melting zone.

It is evident that each of the processes results in softening of the resin, thereby facilitating mechanical adhesion of talc to the polymer. Based on the disclosure of the prior art, there is every reason to believe even an "effective amount" of anti-blocking agent will be adhered to the polymer particles.

The references are silent with respect to the properties (1), (2), and (3), however, the burden of proof was shifted to Applicants to establish unobviousness differences with regard to these properties. To date, the burden of proof has not been met adequately.

In view of the discussion above, the rejections of record have not been withdrawn.

6. The rejection of claims 41-51, 57, 58, and 61-63 under 35 U.S.C. 103(a) over U.S. Patent No. 4,433,097 to Towada *et al.* in view of U.S. Patent No. 5,739,200 to Cheung *et al.* has been withdrawn. Towada *et al.* teaches embedding talc particles into a polymer resin to improve impact resistance. Arguably, embedding may read upon the recitation "mechanically adhered" as there is no indication as to the extent of adhesion. However, Applicants have shown that the teachings of Towada *et al.*, as a whole, differ from that of the present invention. Upon reconsideration, there is poor motivation to combine references. Therefore, the rejection has been withdrawn.

7. Claim 63 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.